SUPREME COURT OF THE UNITED STATES.

No. 349.

THE UNITED STATES, APPELLANTS,

vs.

GEORGE W. LANE.

APPEAL FROM THE COURT OF CLAIMS.

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1 To the Honorable the Judges of the Court of Claims:

The petition of George W. Lane, a resident of the city of Baltimore, in the State of Maryland, and a loyal citizen of the United States, respectfully showeth:

That your petitioner, by authority of and in pursuance of certain acts of Congress, approved July 13, 1861, May 20, 1862, March 12, 1863, and July 2, 1864, the license and permit of the President of the United States, the recommendation of General Butler, and the regulations prescribed by the Secretary of the Treasury, and the order of the President of September 24, 1864, entered into a contract in writing with J. H. A. Risley, agent for the purchase of products of insurrectionary States, on behalf of the government of the United States, at Norfolk, Va., and for that purpose duly authorized and legally empowered to contract; wherein and whereby the said Risley, for and in behalf of the United States, on the 19th and 20th days of December, 1864, agreed to purchase of your petitioner, and your petitioner agreed to sell to the United States and deliver at Norfolk, Va., one hundred bales of cotton, and one thousand bales of cotton; which bales of cotton were then represented to be on the Chowan river, in the State of North Carolina, or would be there on the 22d of December, 1864, and which your petitioner agreed to transport to Norfolk, and there to deliver to said Risley for and in behalf of the United States; and to that end and purpose the said Risley requested safe conduct for your petitioner, and his necessary means of transportation of said cotton from the said Chowan river to said Norfolk, Va., through the military lines of the United States; and for the cotton so delivered, or to be delivered, the United States promised and agreed to pay your petitioner three-fourths the sum per pound that similar grades of cotton were worth in the city of New York, on the day of its delivery; the delivery to be within a reasonable time.

And your petitioner avers, that relying upon the promise and agreement of the United States, made as aforesaid, he
2 immediately, with all fidelity and dispatch, entered upon the execution of his said executory agreement, and to that end proceeded and purchased the steamer "Philadelphia," at the cost of eighteen thousand dollars, and proceeded with said steamer to the Chowan river, and there procured and purchased at great cost and charge, and had properly laden on board said steamer, two hundred and fifty-seven bales of cotton, weighing one hundred and twenty-one thousand six hundred and forty pounds, properly weighed and inspected under the supervision of Thomas Upton, the agent of the United States, for that purpose specially designated and appointed, and who had the care and custody of said cotton, for its general protection on board of said steamer, for the use and benefit of the United States, as well as to see that all of the cotton so purchased was delivered to the United States; and the said steamer, with the cargo of cotton on board, immediately steamed for the port of Norfolk, and would have arrived there on or about the 10th day of Jan-

uary, 1865, if it had not been for the unjust and improper interference of the United States, as hereinafter complained of. That on or about the ninth day of January, A. D. 1865, the said steamer and her cargo of cotton, while on her passage to Norfolk, was forcibly taken possession of by the naval authorities of the United States and taken from the custody and possession of your petitioner and treasury agent, and by the naval authority turned over to the Secretary of the Treasury of the United States, and by its direction carried to the city of New York; and the cotton so taken was appropriated to the use of the United States, whereby your petitioner was deprived and prevented from carrying out his said contract of sale and delivery of the said cotton at Norfolk, and the realization of the value of said cotton, at the New York prices, (less one-fourth,) on the day he otherwise would have delivered the same at Norfolk.

And your petitioner avers, that the market value of cotton per pound, of the quality and description of that laden on board of said steamer in the city of New York, was one dollar and twenty-five cents per pound on the day he would have delivered the same to the United States at Norfolk, and of which he was deprived by the acts of the United States, as aforesaid, in violation of their said contract and agreement, as aforesaid.

And your petitioner avers, that in all respects he duly observed and kept all the regulations and requirements of the authori-
3 ties of the United States in the conducting of his said enterprise; that he violated no law or regulation of the army, navy, or Treasury of the United States; that he has made application to the Treasury Department for the payment of the value of the cotton, agreeably to the terms of his said agreement, and payment was refused him; whereby and by force of all which the United States have become liable to pay your petitioner the sum of seventy-two thousand six hundred and eighty dollars and forty-five cents, after making all just and proper deductions; and in consideration thereof promised the petitioner to pay him said sum, which it refuses to do.

G. W. LANE.

WASHINGTON CITY, *ss:*

On this 18th day of Janu'y, 1866, personally came before me the undersigned, George W. Lane, of the city of Baltimore, who signed the foregoing petition, and made solemn oath that the matters and things set forth in said petition, according to his best information, knowledge, and belief, are just and true; that he has at all times borne true allegiance to the United States, and has not in any way voluntarily aided, abetted, or given encouragement to the rebellion against said government; that no assignment or transfer of said claim, or any part thereof, has been made; that he is justly entitled to the sum he claims from the United States; and that no credits or offsets exist in favor of the United States against him.

G. W. LANE.

Subscribed and sworn to in my presence, the year and day above written.

[SEAL.] N. CALLAN,
Justice of the Peace.

T. J. D. FULLER, *Solicitor.*

Post-office address: Washington City, D. C.

4 *Amendment to declaration.—Additional counts.*

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The complainant, by leave of the court, in this, his amended petition, further avers, that in pursuance of the aforesaid several acts of Congress, Executive orders, Treasury regulations, and contracts of agreements, as averred and set forth in his original petition, and in the execution of the same, the United States received and accepted two hundred and fifty-seven bales of cotton, weighing one hundred and twenty-one thousand six hundred and forty pounds, and of the value of one dollar and twenty-five cents per pound, at Norfolk, Va., on the 8th day of January, 1865, to wit: in the Chowan river, in the State of North Carolina, and shipped the same to the port of New York, and converted the same to its own use, and thereby excused and exonerated your petitioner from delivering the same cotton at Norfolk; whereby, and in consideration thereof, the United States became indebted to your petitioner in the sum of one hundred and fifty thousand dollars, and promised to pay your petitioner said sum on demand.

Also, for that the said United States, at said Norfolk, Va., to wit, at Washington, D. C., did, on the 10th day of January, A. D. 1865, being indebted to the petitioner in one other sum of one hundred and fifty thousand dollars for so many goods, wares, and merchandise, before that time sold and delivered by your petitioner to the defendants, and for so much money, before that time had and received to the petitioner's use, and being so indebted, promised to pay your petitioner said sum on demand.

T. J. D. FULLER, *Solicitor.*

5 In the U. S. Court of Claims.—October term, A. D. 1865.

THE UNITED STATES
ats.
GEORGE W. LANE. } No. 2,196.

Plea.

And the said defendants, by John J. Weed, their solicitor, come and make answer to the petition of the claimant on file herein; and not confessing the same, or any part thereof, doth hereby most

expressly deny each and every the allegations therein contained, and call for strict proof of the same.

And as to so much of said petition as sets forth and avers that the United States is indebted to said claimant in the sum of seventy-two thousand six hundred and eighty dollars and forty-five cents, the defendants say that they are not indebted to said claimant in said sum of money, nor any part thereof.

JOHN J. WEED,
Assistant Solicitor for the United States.

6 In the Court of Claims.

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THE UNITED STATES.

And now, to wit, 11th of February, 1867, the court, upon due consideration of the premises, do find in favor of the claimant, and do order, adjudge and decree, that the [the] said George W. Lane have and recover of and from the United States the sum of thirty-one thousand, six hundred and twenty-six dollars and forty cents ($31,626 40.)

BY THE COURT.

7 Court of Claims.

GEORGE W. LANE
vs.
THE UNITED STATES.

The defendant, by its solicitor, Eli P. Norton, makes application to the honorable court for an appeal to the Supreme Court of the United States, from its judgment in the above case.

ELI P. NORTON,
Solicitor for the United States.

Filed 22d of April, 1867.

8 At a Court of Claims, held at the Capitol, in the city of Washington, on Monday the 22d day of April, A. D. 1867.

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vs.
THE UNITED STATES.

Mr. Norton, the solicitor, filed in this case an application for an appeal to the Supreme Court of the United States, from the judgment entered into in this case on the 11th day of February last, whereupon it was ordered that the application be allowed.

9 In the Court of Claims.

GEO. W. LANE
vs.
THE UNITED STATES.

Special finding of facts by the majority of the court.

We find, that in accordance with and in pursuance of the acts of Congress regulating commercial intercourse with the insurrectionary States, the claimant entered into two contracts with the Treasury agent at Norfolk, Virginia. These contracts were, one for the delivery to the agent of one thousand bales of cotton, the other for one hundred bales, which cotton was upon the Chowan river, in the State of North Carolina, and within the lines held by the insurrectionary forces. The commander of the military district gave safe conduct to the claimant, his vessel and crew, to bring out the cotton. The claimant also had a license or permit to take out certain articles a schedule of which was attached to the safe conduct given by the military commander.

The purchasing agent of the Treasury Department at Norfolk, appointed a sub-agent to proceed on board of the vessel and to be in charge of the outward cargo contained in the schedule, and not deliver the same to the claimant until he should have delivered to such agent on board the vessel three time its value in cotton. The outward voyage was made without hindrance, and having arrived at Chowan river, the claimant delivered to the sub-agent on board the vessel two hundred and fifty-seven (257) bales of cotton, weighing one hundred and twenty-one thousand six hundred and forty (121,640) pounds.

On her return voyage, the vessel and her cargo was seized by order of a naval commander on duty in the inland waters of North Carolina. After being detained several days, and an examination made into the objects and character of the voyage and the regularity of the papers, the vessel and cargo were released. She again started on her course towards Norfolk, and before arriving there was again seized by order of Admiral Porter, commanding the squadron in those waters. The vessel and cargo were detained at Roanoke Island until the beginning of March, when, under orders from the same admiral, they were turned over to the agent of the Treasury Department at Newbern, North Carolina, under the act of 12th March, 1863, relating to captured and abandoned property.

During all this time the claimant and the sub-agent of the Treasury Department remained on board the vessel, and exhibited to the seizing officers the contracts, permits, safe conduct, invoice and schedule of outward cargo, and both protested against the acts of the officers as in violation of law and the safe conduct.

No detailed report of the proceedings and acts of the naval officers was ever made to the Secretary of the Navy, but the fact of the seizure reported without giving any statement or detail of the facts and circumstances connected therewith.

The agent of the Treasury Department at Newbern immediately after the vessel and cargo were delivered to him, reported the facts to the Secretary of the Treasury. The claimant, about the same time, made application to the Secretary of the Treasury to have the vessel and cotton restored to him. This was refused, and the Treasury agent at Newbern was directed to have the vessel and cargo sent to some port where the questions could be decided by a court having jurisdiction. The agent shipped the cotton to New York, and the vessel was afterwards sent to Washington, D. C., where she was libelled at the instance of the United States in the Supreme Court of the District of Columbia, sitting in admiralty, where a decree with costs, passed in favor of the claimant.

No proceedings were ever taken against the cotton, and on the 22d July, 1865, the same was restored to the claimant by order of the Secretary of the Treasury.

We further find that the acts and doings of the naval officers in seizing, detaining, and turning over the claimant's vessel and cargo as captured and abandoned, were, at the time, without any sufficient cause, and altogether unauthorized by the United States; but that the United States by her proper authorities adopted and ratified these acts, and thereby made them acts of State on behalf of the United States.

We further find, that if the claimant had not been improperly interfered with in his voyage, he would have arrived at Norfolk on or before the 20th day of January, A. D. 1865. The price of cotton on that day, in the city of New York, was ninety-six cents per pound, which price, less twenty-five per centum, to be deducted for the use of the United States, he would have received from the agent of the Treasury Department, amounting, in the aggregate, to eighty-seven thousand five hundred and eighty dollars and eighty cents, and that the value of the same cotton when delivered back to him in New York, in July, 1865, was forty-six cents per pound, amounting to the sum of fifty-five thousand nine hundred and fifty-four dollars and forty cents, ($55,954 40.) And that the loss accruing by such capture and detention to the claimant amounted to the sum of thirty-one thousand six hundred and twenty-six dollars and forty cents. ($31,626 40.)

Upon these facts the Court ruled as follows:

1st. That the contracts with the agent of the Treasury for the sale and delivery of the cotton were valid and lawful contracts.

2. That the seizure and detention of the claimant's vessel and cargo by the officers of the navy were unlawful and unauthorized.

3. That the recognition of such acts by the executive authorities of the United States, by directing the vessel and cargo to be delivered to a Treasury agent, and by shipping the cotton to New York, and afterwards libelling the vessel and cargo in a Court of Admiralty, were such recognitions of the acts of the naval officers making the seizures, as constituted those seizures acts of State for which the United States was alone responsible.

4. That the judgment of the Court of Admiralty was consultive;

that the voyage, a lawful and proper one, and conducted according to the prescribed regulations of the trade in which the claimant and his vessel were engaged.

12 5. That such acts constituted a breach of the contracts between the claimant and the United States, and entitled him to such damages as he sustained thereby.

6th. That the measure of damages was the difference between the price he was to have received for the cotton at the time and place of delivery and its value at the time and place it was redelivered to him.

13 In the Court of Claims.

GEORGE W. LANE
vs.
THE UNITED STATES.

I, Samuel H. Huntington, chief clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above entitled cause, and of the final judgment of the court thereon; of the application of the solicitor of the United States for the allowance of an appeal, as filed in the clerk's office on the 22d of April, 1867, and of the order of the court allowing the same; of the special finding of the facts by the majority of the court, and the conclusions of law on said facts on which the court founds its judgment.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Washington, this 6th day of December, A. D. 1867.

[SEAL.] SAML. H. HUNTINGTON,
Chief Clerk Court of Claims.

In the Supreme Court of the United States.

October Term, 1903.

[redacted] Appellant,

vs. } No. 196.

[redacted]

[redacted]

BRIEF FOR THE UNITED STATES.

T. LYLE BROKEN,
Assistant Attorney General of the United States.

In the Supreme Court of the United States.

DECEMBER TERM, 1868.

THE UNITED STATES, APPELLANT,
vs.
GEORGE W. LANE.
No. 196.

APPEAL FROM THE COURT OF CLAIMS.

Brief for the United States by T. Lyle Dickey, Assistant Attorney General.

NOTE.—With this brief is presented, to the court a pamphlet printed in 1868, containing "acts of Congress and rules and regulations concerning commercial intercourse with the insurrectionary districts of the United States," to which reference is made in this brief.

ACT OF JULY 13, 1861.

By act July 13, 1861, section 5, "all commercial intercourse by and between States declared in insurrection and the citizens thereof, and the citizens of the rest of the United States, was declared unlawful, except such as should be licensed by the President, and conducted under the regulations made by the Treasury Department. (See page 3 of the pamphlet.)

ACT OF MARCH 12, 1863.

The act of March 12, 1863, provided for agents of the Treasury Department, to collect "all abandoned and captured property," &c., and enacted that "all property coming" (into any of the United States not declared in insurrection) "from within any of the United States declared in insurrection, through or by any person other than a treasury agent, or under a lawful clearance by

the proper treasury officer, shall be confiscated," &c. (See section 4, page 8, pamphlet.)

Treasury Regulations.

Section VII of regulations issued by the Honorable S. P. Chase, Secretary of the Treasury, March 31, 1863, (pamphlet, page 25,) says: "No permit shall be granted to transport to or from, or to sell or purchase in any place or section whatever, *not within the military lines* of the United States army."

The circular letter of the Honorable S. P. Chase, Secretary of the Treasury, addressed to William P. Mellen, supervising special agent, &c., and sent to other supervising special agents under date of July 3, 1863, (pamphlet, page 35,) states one of the general purposes, which the Secretary had kept steadily in view, to be, "to allow *no intercourse at all beyond the national* and *within the rebel* lines of military occupation; across these lines there can be no intercourse except that of a character exclusively military." * * * * * If "any person desires to bring cotton, tobacco, sugar, turpentine, or other property already purchased, from any place within the lines of our military occupation, I can see no objection to his being permitted to do so," subject to regulations.

Regulations VIII, as revised and published September 11, 1863, (pamphlet, page 40,) declares: "Commercial intercourse with localities beyond the lines of military occupation by the United States forces is strictly prohibited, and no permit will be granted for the transportation of any property to any place under the control of insurgents against the United States."

Act of July 2, 1864.

By the 4th section of act of July 2, 1864, the prohibitions of the act of July 13, 1861, were extended to "commercial intercourse by and between persons residing or being within the lines of national military occupation, in such districts declared in insurrection, whether with each other or with persons being within such insur-

rectionary districts, but not within our military lines. (See page 10 of pamphlet.)

Section 8th of this act provided that the Secretary of the Treasury *might authorize* agents "to purchase *for the United States* any products of States declared in insurrection *at such places* therein as *shall be designated by him*, at *such price* as shall be *agreed on* with the seller, not exceeding *the market price* thereof *at the place of delivery*, nor exceeding *three-fourths of the market value* thereof in the *city of New York*, at the latest quotations known to the agent purchasing." (See pamphlet, page 10.)

Section 9 of this act *repeals* so much of section 5 of the act of July 13, 1861, as made it *lawful for the President to license* or *permit* such trade by *private citizens* and *traders* except to supply necessaries to loyal persons *within* the federal lines, and to authorize persons within the federal lines to bring or send to market in loyal States products of their own labor or of the labor of freedmen or others in their employment. (See page 11 of pamphlet.)

Section 11 of this act requires the Secretary of the Treasury to make such rules and regulations as were necessary to secure the proper execution of this act, &c. (Page 12, pamphlet.)

Treasury Regulations of July 30, ~~1863~~ 1864

On the 30th of July, 1864, rules were promulgated by the Secretary of the Treasury, and by Rule III (page 64 of pamphlet) "commercial intercourse with localities *beyond* the lines of *actual* military occupation by the United States forces *is absolutely prohibited*; and *no permit* will be granted for the transportation of *any property* to *any place* under *the control of insurgents* against the United States."

Treasury Regulations of September 24, 1864.

On the 24th of September, 1864, general regulations for the purchase, on government account, of products of insurrectionary States, were made by the Secretary of the

Treasury, approved by the President, by which Norfolk was made a purchasing point (pamphlet, page 101), and the special agent was required (by Regulation VII), to the extent of the funds at his command, to purchase *all products* offered to him (of the character which by his instructions he was authorized to buy); "but *no liability of any character* shall be *authorized* or *assumed* by any agent, *for* or on account of *the government*, previous to the *actual delivery of the products*, other than a stipulation to purchase products *owned* or *controlled by applicants*, at a *price to be agreed upon at the place and date of delivery*." The form of this stipulation is given (pamphlet, page 103), and consists of a certificate by the treasury agent, that he has "*agreed to purchase*" from C. D. (property, &c.), "which he stipulates shall be delivered to me, *unless prevented* from so doing *by the authority of the United States*," with a "request" for "safe conduct."

By Rule VIII (pamphlet, page 101), "whenever any person shall make application to the purchasing agent in writing, setting forth that he '*owns* or *controls*' products, stating the kind, quantity, and location thereof, or the date at which they will be delivered at some specified location accessible to transportation," the purchasing agent was directed to give a certificate that such application had been made, and request safe conduct for such party and his necessary transportation to the location specified, and for himself and products from the location specified to the purchasing agent. (The form of this certificate is given at page 103, pamphlet.) Rule IX provided that parties, having sold and *delivered* products, shall, upon their request, be furnished by the purchasing agent with a certificate stating the character and quantity of articles purchased, the price paid, the aggregate amount of payment, *the place whence*, and *the route by which* the property was transported. (Page 102.)

PRESIDENT'S PROCLAMATION, SEPTEMBER 24, 1864.

On September 24, 1864, (see pamphlet, page 104,) the President issued his proclamation, reciting that Congress had authorized the purchase for the United

States of products of States declared in insurrection, and that the Secretary of the Treasury had designated Norfolk and other places named therein as places of purchase, and had made regulations for such purchases, and he therefore proclaimed that all persons, except those in the service of the government, "*having in their possession*" *such products* (and which said agents were authorized to purchase), "and all persons *owning* or *controlling such products*," are authorized to convey them to either of said places of purchase, and "such products, so destined, shall not be liable to detention, seizure, or forfeiture, while *in transitu* or awaiting transportation." And that "any person having the certificate of a purchasing agent as prescribed by Treasury Regulation VIII, is authorized to pass with means of transportation to the points named in said certificate, and to return therefrom with the products required for the fulfillment of its stipulations." And that "any person having *sold, and delivered* to *a purchasing agent products* of an insurrectionary State," "and having in his possession a certificate of the fact, stating the character and quantity of products, and the aggregate amount paid therefor, as prescribed by Regulation IX, shall be permitted" "to purchase from any authorized dealer," at the place of sale, or any other place in a loyal State any "articles not contraband of war, nor prohibited by the War Department," "to an amount not exceeding in value one-third of the aggregate value" of products sold by him as certified by the agent; and such articles may be transported by the *same route* and *to the same place, from* and *by which* the *said products* sold and delivered, *reached the purchasing agent*," and *such goods* "shall have safe conduct, and shall not be subject to detention, seizure, or forfeiture, while being transported *to the places and by the route set forth in said certificate.*"

Generals and military officers commanding districts, posts, or detachments, and officers commanding fleets, flotillas, and gunboats, "*will give safe conduct* to persons and products, merchandise, and other articles duly authorized as aforesaid and not contraband of war, or prohibited by order of the War Department, or the orders

of such generals commanding, or other duly authorized military or naval officer made in pursuance thereof."

ALLEGATIONS OF THE PETITION.

The petition states that, in pursuance of these acts and regulations, Lane "entered into *a contract* in writing" with Risley, the purchasing agent at Norfolk, Va., whereby Risley, in behalf of the United States, on the 19th and 20th days of December, 1864, agreed to purchase, and Lane agreed to sell, and deliver at Norfolk in a reasonable time, one hundred bales of cotton, and one thousand bales of cotton, which cotton was represented to be on the Chowan River, in North Carolina, and which petitioner agreed to transport to Norfolk and there deliver to Risley; and to that end Risley requested safe conduct for him and his necessary means of transportation of said cotton from Chowan River to Norfolk through the military lines of the United States, and agreed to pay Lane for the cotton, when delivered, *three-fourths* the sum per pound that similar grades of cotton were worth in the city of New York on the day of its delivery.

That Lane entered upon the execution of this agreement, and to that end bought a steamer and proceeded to Chowan River, and purchased and put on board the steamer two hundred and fifty-seven bales of cotton, and started for Norfolk, and would have reached there on January 10, 1865, but for the following facts alleged:

That on the 9th of January, 1865, the steamer and her cargo of cotton was forcibly taken from the custody and possession of Lane by the naval authorities of the United States, and thereby he was prevented from delivering his cotton, and consequently from getting the price agreed to be paid by Risley.

FINDINGS BY THE COURT OF CLAIMS.

The Court of Claims find that Lane "entered into *two contracts*" with the treasury agent at Norfolk, "one for the delivery of one thousand bales of cotton, and one for one hundred bales, which cotton was on the Chowan

River, in North Carolina, and *within the lines* held by the *insurrectionary forces;*" that "the commander of the military district" gave safe conduct to Lane, his vessel, and his crew, to bring out the cotton; that the purchasing agent at Norfolk appointed a sub-agent, who went out as a quasi-supercargo, "to be in charge of an outward cargo" (set forth in a schedule attached to the safe conduct given by the military commander, and which cargo Lane had a license or permit to take out), and not deliver the same to Lane until he should have delivered to such agent on board the vessel *three times its value in cotton;* that the outward voyage was successful, and Lane "delivered to the sub-agent on board the vessel 257 bales of cotton;" that on her return voyage "the vessel and cargo was seized by order of a naval commander on duty in the inland waters of North Carolina," and kept several days and then released, and again started towards Norfolk, and before arriving there "was again seized by order of Admiral Porter, commanding the squadron in those waters;" that "the vessel and cargo was detained at Roanoke Island until the beginning of March, when, under orders from the same admiral, they were turned over to the agent of the Treasury Department at Newbern, North Carolina," as captured or abandoned property; that during all this time Lane and the sub-agent remained on board and exhibited to the seizing officers their papers, and protested against the seizure and detention; that the fact of the seizure, *without any statement of the circumstances*, was reported to the Secretary of the Navy; that, under direction of the Secretary of the Treasury, the agent at Newbern sent the cotton to New York and the vessel to Washington, where she was libeled in the Supreme Court of the District sitting in admiralty, where a decree with costs passed in favor of Lane; that the cotton was restored to Lane, at New York, July 22, 1865, by order of the Secretary of the Treasury.

The court further find that the seizures, detention of the vessel and cargo by the naval officers, and the turning over of the same as captured and abandoned property, were acts without any sufficient cause, and un-

authorized by the United States; but the United States ratified and adopted these acts, and made them acts of state; that if Lane had not been thus interfered with he would have arrived at Norfolk on or before January 20, 1865; that the price of cotton on that day in New York was ninety-six cents per pound, and Lane would have received that price, less twenty-five per cent., from the agent of the Treasury Department, being $87,580 80, and that the value of the cotton, when restored in New York in July, was $55,954 40, and that the loss accruing by such capture and detention to the claimant amounted to $31,626 40, and for *this amount* judgment was rendered against the United States.

COMMENTS ON THE CASE.

It will be observed that the petition says that Lane proceeded under *one contract*, and the court find that he acted under *two contracts;* that the petition says the *contracts* were made at Norfolk, on 19th and 20th of December, 1864, and that the time and place of the delivery agreed upon was Norfolk, in a reasonable time, while the findings of the court do not show *the time* or *place* of *making* the contract, nor *the time* or *place* agreed upon for *the delivery* under the contract; that the petition says that the price agreed upon was to be three-quarters of the market price at New York, on the day of delivery, while the findings of the court do *not* show that *any agreement* was *ever* made *as to price*, and Rule VII of regulations of September 24, 1864, (page 101 of pamphlet,) provides that the price in all cases was "*to be* agreed upon at the place and *date* of the delivery," and, of course, the agent could not lawfully make any agreement as to price until the time of actual delivery; and then Rule IV says the price "shall be agreed upon," but shall in no case exceed three-quarters the market price at New York, (*not* on the *day* of *delivery*, but) according to the *latest quotations known to the purchasing agent* at the date of delivery, less a sum equal to the internal revenue tax, and some other deductions set out in Rule IV. (Pamphlet, page 101.)

The petition and the court findings *are both silent* as to the market price of cotton at Norfolk; while Rule IV says the price shall in no case exceed *that market price* on the day of delivery. It will further be observed that, while provision is made for "safe conduct" to be furnished, not only from military officers, but also from naval officers, and while the route of the voyage of the claimant lay, not only by way of military posts, but also through waters in charge of a part of our naval forces, yet claimant, though procuring safe conduct from certain military commandants, utterly neglected to apply to any naval officer for a safe conduct through the waters under the control of our naval forces, and the attention of no naval officer was ever called to his operations until he had made his outward voyage (which, of course, must have been by stealth in passing the vessels of the navy), until he arrived at our naval lines, coming from the country of the public enemy.

It is insisted, on behalf of the appellant—

I.

The voyage was in violation of law, and the contract alleged and the contracts found by the court to have been made were illegal; the seizure by the naval officers was proper, and the claimant has therefore no just and legal cause of complaint.

Upon an examination of the foregoing quotations from the act of July 13, 1861 (page 3 of pamphlet), from the act of March 12, 1863 (page 8), from treasury regulations of March 31, 1863 (page 25), from circular letter of Secretary of Treasury of July 3, 1863 (page 35), from revised treasury regulations of September 11, 1863 (page 40), from the act of July 2, 1864 (pages 10 and 12 of pamphlet), from treasury regulations of July 29 and 30, 1864 (page 64), and from treasury regulations of September 24, 1864 (pages 101, 102, and 103), and the quotations from the President's proclamation of September 24, 1864 (page 104), it appears *plainly* that *everywhere* commercial intercourse with those parts of the insurrectionary States which were *within the control of rebels*, was *absolutely forbidden* from the beginning of the

war, unless, indeed, *it may be* in the act of July 2, 1864, and the regulations and President's proclamation made thereunder. Let us examine these and see if really they make any change in this regard. If it were intended by that act and the practice under it to license such trade it is not so *specifically provided*, and is manifested *only*, if at all, by the want of express words of limitation in the act. It authorizes the "purchase" for the United States of "any products of States declared in insurrection, at such places therein as shall be designated by" the Secretary of the Treasury. It does *not say* expressly that these provisions relate *only* to products *found within* the federal lines, but is not that the fair construction? Such trade with a public enemy is forbidden without statute according to the laws of war among all civilized nations; and when that non-intercourse had been so often and so fully proclaimed by all the departments of the government from the beginning of the war, are we to construe these general words as changing this policy? This construction, limiting the provisions of this act to those parts of the States in insurrection, which were for the time within our military lines, is strengthened by the fact that the prohibitions of the act of July 13, 1861, were extended by the 4th section of this act of July 2, 1864, *even* "to commercial intercourse by and between persons residing or being within the lines of national military occupation in districts declared in insurrection" "*with each other*," (page 10.) This construction is strengthened, too, by the fact that section nine of this act repeals so much of the act of July, 1861, as made it lawful for the President to license and permit trade by private citizens in such districts, even within the federal lines, except to supply necessaries to loyal persons, and to authorize persons within the federal lines to bring to the loyal States products of their own labor, or of freedmen, &c., (page 11.)

This construction seems to be fortified also by the language of Regulation III of July 30, 1864, treasury regulations, which declares (page 64): "Commercial intercourse with localities beyond the lines of actual military occupation by the United States forces is absolutely

prohibited, and no permit will be granted for the transportation of any property to any place under the control of insurgents against the United States." Let it be remembered that this regulation was adopted after the passage of the act of July, 1864, and in this connection observe that the treasury regulations of September 24, 1864 (page 101), and the President's proclamation of the same date (page 104), issued in relation to the purchase of these products "on government account," *nowhere profess* to *rescind* or *revoke this regulation*, No. III, of July 30, 1864, but they purport to be consonant therewith, and yet, in Section IV, of the President's proclamation, it is declared (page 104) that persons having sold and delivered products of an insurrectionary State in accordance with the regulations of September 24, and having in his possession as prescribed in Regulation IX of that date, "a certificate setting forth the fact of such purchase and sale, the character and quantity of products, and the aggregate of the amount paid therefor," *shall be permitted* to purchase at the place of such sale, or any other place in a loyal State, merchandise not exceeding in value one-third of the aggregate value of the products so sold by him as certified, and the merchandise so purchased "*may be transported by the same route and to the same place*, from and by which the *products* sold and delivered *reached the purchasing agent*."

Now, if it were contemplated by this act of July 2d, 1864, and by the treasury regulations, and President's proclamation of September 24th, 1864, that the purchasing agents of the treasury should negotiate with persons owning or controlling products within the rebel lines, and, that such agent in view of such purchase, should ask safe conduct from our military, and our naval officers to pass through our lines, and enter the rebel lines, to reach the products so owned and controlled, and proposed to be sold, and if it were contemplated that the party owning or controlling these products so situated, should return through the rebel lines, and have safe conduct from our naval officers and military officers in again entering our lines, and proceeding to the purchasing agent, and there selling and delivering such products

and procuring from the purchasing agent, as directed in Regulation IX, a certificate of the facts, with the price paid, the aggregate amount of payment, "and of *the place whence*," "*and the route by which*" the products were transported, and if it were also contemplated by the President in issuing his proclamation of September 24, 1864, that the party holding such certificate should be allowed to purchase merchandise to the amount of one-third of the aggregate payment stated in his certificate, and *be permitted* to take such merchandise back with safe conduct from our military and naval officers, "*by the same route, and to the same place, from and by which* the products so sold and delivered *reached the purchasing agent*," it is evident that this proceeding would be in violation of that treasury regulation, No. III (page 64), which says "*no permit* will be granted for the transportation of any property to any place under the control of insurgents against the United States." It seems palpable to my mind that if such had been the intention of Congress in passing the act of July 2, 1864, and of the Secretary of the Treasury in framing the regulations of September 24, 1864, and of the President, in issuing his proclamation of the same date, we would have found *somewhere* in *some one* of these several documents, express words, showing that it was the intention to make the provisions of the act of July 2d applicable to products still within the actual military lines of the insurgents, and we would not have been left to infer that proposition or intention, merely from the *general character* of the terms used in those documents and the want of *express words* of limitation.

Again, whatever may be the proper ruling on the question, as to whether under the act of July 2, 1864, and the regulations thereunder, it was lawful for treasury agents to thus cause products of insurrectionary districts to be brought from within the rebel lines, the voyage was plainly unlawful in this. It appears from the petition, that the claimant at the time he alleges he made his contract, neither owned nor controlled the cotton, but that he procured and purchased this cotton on the Chowan River, within the rebel lines, after he had made his

outward voyage, so he must have obtained his contract or contracts by the illegal act of the purchasing agent, or by false representations. Rule VII of treasury regulations, September 24, 1864 (page 101), expressly limits the power of the government agent, before the actual delivery of the products to "a stipulation in the form hereinafter prescribed, to purchase *products owned and controlled* by applicants."

And Rule VIII provides for an application in writing "setting forth that he" (the applicant) "*owns or controls* products stating," &c., and the President's proclamation of the same date is limited to persons "*having in their possession* products of States declared in insurrection," &c., and to "persons *owning and controlling* such products therein." These provisions and regulations were not intended for mere speculators, and the purchasing agent evidently had no power or authority to negotiate with *any one* in relation to such products, other than a person *owning and controlling* the products at the time of the negotiation.

Again, the petitioner was wisely careful to be entirely silent in his petition as to the out-going cargo on this voyage, which the court finds was set forth in a schedule attached to a safe conduct from the military authorities, and which cargo the court find Lane had a license or permit to take out; and Lane was accompanied on this expedition by what is called a sub-agent of the purchasing agent at Norfolk. In none of the acts or regulations relating to this subject do I find any authority for a purchasing agent to have a sub-agent, or to send such sub-agent into the rebel lines to assist in a venture like this of the claimant; nor can authority or permission be anywhere found in the acts of Congress or treasury regulations for taking a cargo of goods into the country of the public enemy, unless the proclamation of the President of September 24, 1864, shall be construed to permit such a proceeding. And that proclamation, in its broadest construction, cannot be extended to any case, except the taking of a return cargo bought with part of the proceeds of southern products previously sold to a purchasing agent of the Treasury Department, and limited

n its utmost extent to one-third the aggregate amount of payment made by the Treasury Department to the party, in payment of such southern products previously sold and delivered to the purchasing agent of the treasury. There is no pretense in any part of the record that this case is one of that class. It may be, as the Court of Claims ruled, that the decree of an admiralty court is conclusive; but there is nothing in this record showing that this question was decided by that court. And it may well be that the allegations upon which that vessel was afterward libeled were not sufficient, or were not sufficiently sustained by proof, to warrant a decree of forfeiture against the vessel; and yet, the proposition that this voyage was in contravention of law, and the agreements and arrangements under which it was undertaken were all void, may be sound and undisputed. And we insist that the opinion expressed by the Court of Claims "that the seizing and detaining of this vessel by the naval officers was without any sufficient cause, and altogether unauthorized," was and is an erroneous opinion; and that this is made plain by the facts which that court has found, and sent up in the record.

II.

The United States never contracted with the claimant that its naval officers would not seize and detain his vessel and cotton, and claimant has, therefore, no cause of action which the Court of Claims can, within its jurisdiction, enforce.

The grievance or wrong for which this suit is brought was the capture and detention of his steamer and his cargo of cotton by the naval officers, and afterwards by the officers of the Treasury Department. In fact, this capture and detention is the gist of claimant's action. One of the findings of the court is, "that the loss accruing to the claimant by such capture and detention amounted to the sum of $31,626 40." For this sum the judgment is rendered.

The Court of Claims, however, have no jurisdiction in cases arising out of damage to, or destruction of, prop-

erty in the Southern States taken or destroyed by any part of the army or navy.

To bring the case within the jurisdiction of the court, it is, however, alleged in substance that the United States made a contract with Lane in effect, that his vessel and cargo should not be interfered with or detained by any part of the navy or army in this proposed voyage from Chowan River to Norfolk.

1. By making a contract on behalf of the United States, through agents having lawful authority to make it, *no implied contract arises* that the government of the United States will not exercise its general powers as a government, through its officers, legislative, judicial, or executive; although such exercise of power may interfere with the execution of the contract.

If the action of government could avail as an excuse for abandoning the contract by the other party, it could not be a ground of claim for damages against the United States.

2. The agent whose action is relied upon in this case had no lawful authority to bind the government in the manner alleged.

The United States can make no contract except by and through an agent or officer clothed by law with the authority to make such contract; such a contract, it is held by the Court of Claims, was made by the purchasing agent of the Treasury Department. What powers did he have under the law? Congress enacted "that it shall be lawful for the Secretary of the Treasury to authorize agents to purchase for the United States any products of States declared in insurrection *at* such places *therein* as shall be designated by him, at such prices as shall be agreed upon by the seller," not exceeding certain limits specified in the act, and to be paid for out of a specified fund (page 10); and enacted further "that the Secretary of the Treasury shall make such rules and regulations as are necessary to secure the proper and necessary execution of the provisions of this act," (page 12.) This is all the legislative authority on this subject. The United States was at this time engaged in a gigantic war with a most formidable enemy,

with all her immense naval and military forces in full warlike action. Can any one imagine under these circumstances, that the few simple words of these two sections, conferred on the Secretary of the Treasury, for the paltry purpose of speculating in cotton, authority to appoint a bevy of purchasing agents, and authorize each one of them, in behalf of the United States, to contract with a cotton speculator, that his vessel and cargo should not be interfered with or detained in going into and coming out of the territory under the control of the enemy, and thereby limit and embarrass the broad discretion that must ever, in time and place of actual war, be intrusted to military and naval officers in command of our war forces? There is not one word in the statute about transportation or safe conduct. The agents are to be authorized "to purchase" "the products" *at certain places* to be named by the Secretary. The act evidently contemplates that owners and dealers are to take the chances of traders in time of war in getting the products to the places designated, and when the products are brought to the place of purchase, the agents are to have power to purchase and accept the delivery and agree upon the price with the seller and make arrangement for its payment, subject to the limitations and restrictions of the act. This is all that this contracting power conferred by law amounts to. This is its whole extent. If the Secretary of the Treasury had under this act expressly authorized these agents to contract that proposed vendors of such property should not be arrested nor their cargoes detained when moving to the place of proposed purchase, such action on the part of the Secretary, even backed by the direction of the President, in making such order, would have been void and without legal effect, because without authority of law to take such action.

The Secretary of the Treasury gave his agents no power to make such a contract, nor did he attempt to do any such thing. On the contrary, by his regulations of September 24, 1864, he provides for the appointment of purchasing agents; designated the places of purchase, of which Norfolk was one (page

101); provided that these agents should give bond; declared that the price to be paid should be agreed upon between the seller and the agent, stating limitations which the price should not exceed; directed what should be done with the proceeds of sales of property so purchased; directed that the agent should, to the extent of his funds, purchase products offered, coming within his instructions, but declaring, that "*previous to the actual delivery of the products, no liability* of *any* character shall be *assumed* by any agent for or *on account of* the *government*, other than *a stipulation* in the form hereinafter prescribed, to purchase products owned and controlled by applicants *at a price to be agreed* upon *at the place* and *date of delivery*;" directed further, that when any person should make a proper application in writing (which is minutely described in the regulation), the purchasing agent should "give *a certificate that such application has been made*, and *request* safe conduct for such party with his necessary transportation to the location specified, and for himself and products *in transitu* from the points named to the purchasing agent," and then gave a form of the paper, which in one rule is called, "a stipulation to purchase," and in the last, "a certificate that such application has been made with request for safe conduct," &c. This *form* is on page 103 of pamphlet, to which the court is referred. This is the substance of the power conferred upon said agents by the Secretary, and of the limitations of their powers. They clearly confer no power on the agents to contract against the interruptions which may occur by the action of naval or military forces. On the contrary, "previous to the actual delivery of the products," the agent can do nothing by which any liability can be incurred by the government, except to execute a certain paper in a given form, which in one rule is called "a stipulation," and in another is called "a certificate."

3. No such contract was in fact made, or attempted to be made.

If this form was not followed in substance in this case, the purchasing agent violated his instructions, (which instructions being public official regulations

made in pursuance of law, had the force of law and were, like the law, known to the claimant,) and thereby exceeded his powers, and his acts were void. If this form was followed, then the only thing which in the nature of a contract could have existed was in substance as follows:

"I, J. H. A. Risley, agent for the purchase of products of insurrectionary States, on behalf of the government of the United States, do hereby certify that I have agreed to purchase from G. W. Lane, of the city of Baltimore, one hundred bales of cotton, and one thousand bales of cotton, which products it is represented are on the Chowan River, in North Carolina, and within the lines held by the insurrectionary forces, and which he stipulates shall be delivered to me, unless prevented from so doing by the authority of the United States. I, therefore, request safe conduct for the said G. W. Lane, and his means of transportation, and said products, from Chowan River, within the lines held by the rebels, to Norfolk, Virginia, where the products so transported are to be sold and delivered to me under the stipulation referred to above, and pursuant to regulations prescribed by the Secretary of Treasury.

"J. H. A. RISLEY."

This contract fills in substance the points of the contracts described by the court in the findings of fact. They say: "These contracts were, one for the delivery to the agent of one thousand bales of cotton, the other for one hundred bales, which cotton was upon the Chowan River, in the State of North Carolina, and within the lines held by the insurrectionary forces." This is all that is said about the provisions of the contracts in the findings. This, as far as it goes, agrees with the form presented; and, as a public officer who does any act is presumed to have done it according to law, until the contrary is shown, it is to be taken that the agent followed his instructions, and that the form given above is all the contract that was ever executed. Presented in this form, it is not difficult to perceive that the agent not only had *no power* to make any contract with Lane, providing

against the possible action of military and naval forces, but that, in point of fact and in point of form, he did not attempt to make such a contract. On the contrary, it is plain that it was contemplated by both parties, the agent and Mr. Lane, that these military and naval authorities might interrupt this proceeding, and in contemplation of this contingency, Mr. Lane having no guarantee against such contingencies, and conceding that he has no such guarantee, a provision is put in the paper which necessarily implies that Mr. Lane has no assurance against this liability, but which will relieve him from his promise to deliver if prevented from delivering by the authorities of the United States. Why, I ask, are the words put in this paper, "*unless prevented* from so doing by the authorities of *the United States*," if it were not perfectly understood that this whole proceeding was subject to the contingencies of war, and that the army and navy were to exercise a sound discretion on such matters, without any restraint by any of these comparatively petty arrangements of these purchasing agents?

Let it also be observed, that in this arrangement there is no undertaking on the part of the agent that the proposed seller *shall have safe conduct.* The agent simply *requests* safe conduct for the proposed seller. The very language implies that the *request* may be denied, without violating any legal right of the dealer. The military or naval officer having issued a safe conduct to a dealer, had full authority, in his discretion, if he thought it necessary for war purposes, to withdraw, revoke, or rescind the safe conduct at any time. The President himself had by his proclamation declared that owners would be permitted to bring products to the place of purchase. He surely had the power, without any violation of the legal rights of dealers, to withdraw that permission. A military or naval officer who should take the responsibility of disregarding this proclamation and refusing safe conduct to such products was answerable to the President, his commanding officer, for a violation of his orders; but he violated no contract right of the dealer.

It is, therefore, insisted that the United States did not make any such supposed contract, giving guarantee

against the action of its own army or its own navy, or against its own action in its capacity as a sovereign in carrying on a war for self-preservation, and consequently no action will lie for the supposed breach of any such contract.

The palpable truth is that this *preliminary arrangement*, which in one regulation is called "a stipulation," and by the Court of Claims is called a "contract for the delivery" of cotton—is not, in contemplation of law, a *contract* at all, and lacks all the essential elements of a *contract*. It was a mere declaration on the part of the proposed seller and on the part of the agent, respectively, of their willingness and intention to make a contract at some future day, if the seller should succeed in getting his goods to Norfolk. This *preliminary arrangement*, so far as it related to the cotton to be brought in, was enacted by the direction, it may be, of the Secretary, and with the approbation of the President. It was not provided for by law, although it may not have been any violation of law. It was a device purely for the benefit of the proposed vendor, and was not intended to impose any obligation on the United States, and did not do so. Suppose that this voyage had not been interrupted and the cargo of cotton had reached Norfolk in good order; *then* and *not till then*, had the agent the power to conclude a contract of purchase. He was not permitted to agree to pay more than three-fourths of the last New York quotations. He was not at liberty to agree upon a price exceeding the then market price of cotton in Norfolk. He was not, however, under any obligations to agree upon a price which should be as great as the minimum limitation. Suppose the agent had then been of opinion that cotton would fall before it could reach New York, and had said to the seller, "I will not agree to give you more than one-sixth of the last New York quotation." He would have had a perfect right to have said so, and the seller would have been under no obligation to have accepted that offer unless he chose.

It will be observed that this form of certificate, given on page 104 of pamphlet, is not addressed to any officer. This was with a purpose. It was intended to be suited

to be presented to either military or naval officers, or both, for safe conduct, as the case might require. In this case Mr. Lane did not apply to the naval commander, through whose jurisdiction he had to pass for safe conduct, and having *gone by* the war vessels in charge of the waters through which he passed going out, (by stealth, as seems inevitable,) with an outward cargo not allowed by law, he had placed himself under suspicious circumstances, which no doubt led to his arrest and detention. For this he has nobody to blame but himself, and if really innocent, he only suffered as many an innocent man suffers without remedy; when *on probable cause* he is arrested and tried for crime which he never committed and is acquitted. Such a man is unfortunate, but he has no legal redress.

III.

The measure of damages laid down by the Court of Claims is not the true measure of damages, even if the government were liable to damages for a breach of this supposed contract.

They decide that this measure "was the difference between the price he was to have received for the cotton at the time and place of delivery and its value at the time and place it was redelivered to him."

This is clearly not the law. If a cargo of grain passing St. Louis, destined for the New Orleans market, should be met and sunk by the fault of a passing steamer, and abandoned by its owners, and the owners of the offending steamer should raise the cargo and preserve part of it, and redelivers it in a damaged condition to the original owner at Cairo, he accepting it, such owner, in a suit against the steamer for his damages, would not be allowed to recover the difference between the value of the property restored in its damaged co
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the value of the property at the time and place of the injury. The Court of Claims, as a basis for this ruling of theirs, have found as a fact "that if the claimant had not been improperly interfered with in his voyage, he would have arrived at Norfolk on or before the 20th day of January, 1865." This no mortal man or set of men can possibly know. Courts and juries are not allowed to speculate upon contingencies so uncertain. How can it be known that but for this interruption this cargo would have reached Norfolk without other interruptions? She might have been lost by dangers of navigation, or captured by some guerrilla band, or pirate craft, or by a mutinous crew, or lost by some other of the many dangers which beset such an adventure.

Again, the Court of Claims do not find that any price had been agreed upon between the agent and Mr. Lane; and, indeed, the agent, as already shown, had no authority to agree to any price except at the time and place of actual delivery, and therefore there was no price agreed upon. The market price at Norfolk is not even found. So there are no facts in the case to which to apply such a rule of damages. The court, without any facts in the case to warrant such a conclusion, have assumed that three-fourths of the New York price on the supposed day of arrival would have been agreed upon by the agent and seller, and that that amount would not have exceeded the market price at Norfolk, when, by Regulation IV, the agent was limited to a price, less than three-fourths the last New York quotations by the amount of internal revenue tax, and the permit fee, and other deductions for insurance, transportation, &c., and had a discretion, by which he might fix the price as much less than this as he thought fit. The entire ruling as to damages is palpably wrong and unsupported by the facts in the record.

T. LYLE DICKEY,
Assistant Attorney General.

Supreme Court of the United States.

No. 196.

THE UNITED STATES, Appellants,

vs.

GEORGE W. LANE, Appellee.

BRIEF FOR APPELLEE.

T. J. D. FULLER,
Counsel for Appellee.

M'GILL & WITHEROW, PRINTERS, WASHINGTON, D. C.

Supreme Court of the United States.

THE UNITED STATES, Appellants,
vs.
GEORGE W. LANE, Appellee.
No. 196.

APPELLEE'S BRIEF.

STATEMENT OF CASE.

The petitioner, Lane, made a contract for the sale of cotton to the United States, and the delivery of it, at a certain place, and at a certain price, within a reasonable time.

Faithfully performing his stipulations, having incurred all the expense, necessary for the fulfillment of the contract, the same being about consummated, when he would realize the profits arising from it, the United States, the opposite contracting party, prevented Lane from completing his contract, by seizing the cotton, taking it into its possession, diverting it, from its place of delivery, and thence shipping it to New York, and there storing it and detaining it for several months, but finally restoring it to Lane, upon entirely new terms, exacting expenses of transportation and storage, revenue, excise-tax, &c., &c., and in a changed and greatly depreciated condition in value, and the state of the market at New York having depreciated some three hundred per cent.

Lane receives the cotton upon the conditions imposed, protesting, and now asks the court, to render judgment against the United States for the damage he has sustained, growing out of the performance, or hindrance of performance, of the contract on his part, which he alleges to be, the difference in the value of the cotton in New York on the day it was taken from him and came into the possession of the United States, and the price or value of the cotton at the same place on the day it was returned to him.

LEGAL POINTS.

1. If the United States, were a third party and a stranger to the contract, the act for which compensation is demanded, being tortious in its character, exemplary damages could be properly claimed; *but, proceeding under the contract and against the defaulting party, the actual damage is only demanded.* That is, he affirms the contract, and asks to be placed in the same condition pecuniarily, he would have been if the terms of the contract had been duly observed and kept on the part of the United States, and he had not been interfered with, or prevented from performing it on his part.

This loss has been incurred or fallen upon Lane by the interference of the United States, in violation of the contract. As between private individuals, a similar interference or hindrance would subject the opposite party to a legal liability, for it is a familiar principle, that, if a party entitled under a contract to receive a profit, and is prevented or hindered in the performance of it by the opposite contracting party, the law regards the rights under the contract the same, as if it had been fully performed.

Any deviation from this rule, impairs that axiomatic truth, equally respected in courts of law and equity, "No one shall be permitted to take advantage of his own wrong."

On the day the United States seized or became possessed of the cotton, it was worth $1 18 per pound in New York, and on the day of its restoration, the same cotton, at the same place, was worth forty-seven cents per pound. If Lane receives only the last-named sum, the amount will not indemnify him the price paid for it. The sum realized from the sale of it, at the market value, will not reimburse him his original outlay, incurred under the contract with the United States. *His capital, enterprise, time, labor, fatigue, and hazard,* called into requisition by the faith of the Government, sanctioned and strenthened by an express contract, definite in its terms, and induced by public policy, instead of meeting with the reward or profit that he was justly entitled to, he is by the act of the Government, in violation of its express contract, made to sustain a pecuniary loss. The claimant comes into court an injured party, and is fairly entitled to all the relief which the principles of law afford him.

Anything less than the measure of relief sought will work great injustice, and sanction the wrongs that Lane has suffered by entering into a lawful contract with the Government;

for which wrong, the law would afford him an ample and complete remedy, if his contract had been with a private individual competent to contract.

PROPOSITIONS.

1. Lane was the undisputed owner of two hundred and fifty-seven bales of cotton, situated upon the Chowan river, prior to and at the making of the contract.

2. He agreed to sell, and the United States to buy, this cotton. The price to be paid, the place it was to be delivered, was agreed upon by the contracting parties.

3. About the terms of the contract there is no dispute.

4. The law authorized it: the agents of the United States were fully empowered to contract.

5. If Lane had not been interrupted or hindered in the execution of the contract, this court, probably would never have heard of the case.

6. The difficulty, if any exists, arises just at that point of time when the naval authorities, under Admiral Porter, interfered and took the cotton from the custody of its rightful and lawful proprietors.

7. And the question is, what judgment the law will award upon the facts?

By the terms of the statute authorizing the making of this contract, the United States might deliver to the claimant three-fourths of the cotton, or pay him the value of three-fourths of the cotton, according to the market price in New York, on the day of its delivery.

Now, one-fourth of the cotton was the property of the United States at all events. Connecting this fact with the delivery of the cotton to the agent of the United States on board the steamer, and how does the case stand? If Lane was the owner of the cotton until delivery at Norfolk, who was the owner of the one-fourth that belonged to the United States?

The case finds, that an agent of the United States was on board the Philadelphia, to whom the outward cargo was de-

livered, and it was not to be given up until a certain amount of cotton was delivered to the same agent. The two hundred and fifty-seven bales of cotton were placed on board the steamer, *weighed, marked, and delivered.* The cotton became thereby the property of the United States, the title vested, and Lane's duty, thereafter, was that of a mere carrier, to deliver the cotton at Norfolk.

Suppose Lane had attempted to make sale of this cotton to any third person, after its delivery on board the steamer to the agent of the United States, and a question arose, between the United States and such third person, upon the state of facts here shown, could not the United States have maintained replevin for the property or cotton? As between the parties, property passes, by the agreement to sell, without delivery; but here actual delivery accompanied and followed the sale?

Furthermore, the law prohibited Lane from making sale of this cotton to any person but the United States. Nor could any other person than the United States acquire title primarily, or through the United States.

Actual possession acquired under an agreement of sale, the title vests in the vendee *instanter.*

SO THE UNITED STATES WERE ACTUALLY SEIZING THEIR OWN COTTON when Admiral Porter diverted it from its proper course of destination.

1. There is but one United States. A contract made by a duly authorized agent of the United States, binds all parts of the United States, and all its agents.

It matters not, whether the contract is violated by the particular agent who made it, or any other agent acting for and in behalf of the United States, and with its approval.

2. Whatever the naval authorities did, whether authorized or not, the cotton was by them turned over to the Treasury agents, and by them accepted and shipped to New York. They did not repudiate the wrongful acts of the navy agents, by restoring the cotton to Lane, when it came into their possession. By receiving the cotton, and shipping it to New York, the Secretary of the Treasury ratified the acts of the naval authorities. He adopted them and made them his own. The Treasury did not treat and hold the cotton as delivered under and by virtue of the contract.

The Secretary elected to treat the contract as broken and ended by the interference of the naval authorities.

The case may be viewed, at the time the cotton was taken from the possession of its authorized custodians, in two aspects:

1. As an executory contract; and
2. As a contract executed.

According to the original terms of the contract, Lane was to deliver the cotton at Norfolk, Virginia. If he had done so, within a reasonable time, it would have become a contract executed, and he would have been entitled to his money.

He did not deliver it at Norfolk. Why not? When within a short distance of Norfolk, it was taken from him by the authorities of the United States.

It was not taken from him by a stranger. But it was taken from him by one (*in the privity of the United States, by an agent of the United States*) for whose acts the United States are holden. Furthermore, the acts of that agent were confirmed and ratified by the very agent of the United States who made the contract. It was therefore taken by the United States.

Being taken from him by the United States, Lane was prevented from delivering the cotton at Norfolk, Virginia, by the other party to the contract.

"The law considers an offer to perform, and a discharge or hindrance of performance by the opposite party, equivalent to a performance."

Chitty on Contracts, p. 274.
1 Term Rep., p. 638.
8 East. Rep.. 443.
1 Wilson's Rep., p. 115.

Here being a hindrance by the opposite party, it presents to the court the second aspect of the case—*a contract executed.*

Lane may therefore elect to treat the cotton as delivered at Norfolk, and the contract executed, according to its terms, in the eye of the law, and is entitled to the value of the three-fourths, on the day it was taken from him, according to Norfolk prices, or which is the same, New York prices.

The United States derived all the benefit, or might have done so, by receiving the cotton at Newbern, as if it had

been delivered at Norfolk, Virginia, the place of stipulation. If the United States afterwards retained the cotton, without making sale of it, and its value depreciated in the market, it was at its own risk, and not at Lane's.

The United States must be holden to the same legal rule of responsibility in the execution of its authorized contracts as any other private contracting party is.

Suppose this case, in all its material facts, as a matter of contract, had arisen between two private persons. I take it for granted, that no disagreement, between legal minds, could arise as to who was in fault, and the consequences flowing from it.

The *distinction* (taken by the Court of Claims in the case of Jones *et al. vs.* United States) between the United States as a contracting party, and its capacity of sovereign, in what may pertain to the functions of a government, do not apply in this case.

The acts of public enemies, or a state of public war, do not relieve contractors from the responsibility of their contracts; for it is their own folly, or want of the exercise of proper precaution, that they do not protect themselves by stipulations against it in the contract.

Chitty on Contracts, p. 274, and note M, and authorities cited.

3. Lane could not maintain trespass against Admiral Porter for seizing the cotton, his acts being ratified by the Secretary of the Treasury. (Buron *vs.* Denman, 2 Exchequer Rep., p. 267.)

4. Where the party, by his own contract, creates a duty or imposes an obligation upon himself, he is bound to make it good, notwithstanding any accident or inevitable necessity; because he might have protected himself in his contract.

Mill-Dam Company *vs.* Hovey, 21 Pick., 441.

5. The United States were in possession of the cotton, by its own appointed lawful agents, so soon as it was placed on board of the steamer Philadelphia.

6. Hence the repeated protests of that agent against the cotton being diverted from its lawful destination.

7. It was not a question of prize or no prize.

1. Because it was not taken by the captors before a court of competent jurisdiction.

2. It was turned over to the civil department by the seizing officer.

3. The law forbade the seizure of cotton, as prize, in inland waters, where this was taken.
Sec. 7, chap. 225, 1st Session 38th Congress.

8. In the absence of the provisions of the statute of frauds, as between the parties, the title passes by the agreement of sale; and the subsequent delivery to the agent of the United States, on board of the steamer, vested the title of the property in the United States.

9. The property may be regarded as fully vested in the United States from the moment the two hundred and fifty-seven bales were separated from the mass of cotton belonging to the plaintiff, weighed, and placed on board the steamer. The duty of Lane after that was that of a mere carrier for hire.
Benj. on Sales, p. 247, and authorities cited, chap. 5.

10. The United States, at law, was the only lawful purchaser. It owned one-fourth at all events, and was to pay Lane the value of the remaining three-fourths in kind or in money.

1. What was the legal effect of the restoration of the cotton, or the greater portion of it?

2. It did not impair Lane's rights under the contract.

3. It does not defeat his claim for damages, for the breach of it.

4. In trover, the restoration of the property does not cure the act of conversion, and the action may well be sustained after the return of the property.
It at most can only be given in evidence in mitigation of damages.

5. THE VOYAGE WAS LEGAL AND REGULAR IN ALL OF ITS DETAILS.

The judgment of the court of prize, between the United States and Lane, on this same subject-matter—the steamer Philadelphia—is conclusive upon all the world, and estops the United States from calling in question the legality and regularity of the voyage. It was a judgment of a court of competent and *exclusive* jurisdiction, and binds all the world.

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